

LIMITED JURISDICTION COURTS COMMITTEE
November 19, 2003, Arizona State Courts Building

Members Present:

Honorable Michael Traynor, Chair
Honorable George Anagnost
Ms. Kathy Barrett
Ms. Faye Coakley
Honorable Sherry Geisler
Honorable Linda Hale
Ms. Joan Harphant
Honorable R. Wayne Johnson
Ms. Pamela Jones

Honorable John Kennedy
Honorable John Lamb
Honorable Michael Lester
Mr. Frank Maiocco
Honorable Kathy McCoy
Honorable Antonio Riojas, Jr.
Mr. James Scorza
Mr. Paul Thomas

Absent Members:

Honorable Judy Ferguson. excused
Mr. Theodore Jarvi, Esq.

Honorable R.O. McDaniel
Mr. Dale Poage, excused

Staff:

Ms. Lori Johnson, LJC staff
Ms. Carol Ashton
Mr. David Benton
Mr. Mike DiMarco
Mr. Greg Eades
Ms. Agnes Felton
Ms. Karen Kretschman
Ms. Sue Latzko

Ms. Page Gonzales
Ms. Patience Huntwork
Mr. Robert Roll
Ms. Paula Taylor
Ms. Valerie Tillman
Ms. Kathy Waters
Ms. Konnie Young

Guests:

Mr. C. Daniel Carrion
Ms. Janet Cornell

Mr. Rick Rager
Ms. Joan Tobin

REGULAR BUSINESS:

1. CALL TO ORDER

The meeting was called to order at 10:05 AM by Judge Michael Traynor.

2. APPROVAL OF PRIOR MEETING MINUTES

Motion: Motion was made by Joan Harphant and seconded by Judge Geisler **to approve the 9/24/03 meeting minutes** as presented. **Motion passed** unanimously, the 9/24/03 minutes will stand as presented. **LJC-03-19.**

3. PENDING AND PROPOSED RULES UPDATE

Patience Huntwork (AOC) gave the following update regarding the following items which will be on the Court's Rules Agenda on January 10, 2004 :

- The experimental Rule 10.2 regarding peremptory change of judge is effective until the end of January, 2004. It is contemplated the Court will take action to: 1) abolish change of judge in most criminal cases, or 2) make the experimental rule permanent or 3) an intermediate step. The opportunity to comment is still viable up to the first week in December, 2003.
- A few years ago the Court adopted a change in jury procedures that allows jurors to discuss evidence from the beginning of the case, so long as they are all together in one room and this is unique to Arizona. A petition was filed to abrogate this rule back to the original state where jurors can only discuss evidence after all of the evidence has been introduced. The comment period expired November 4, 2003 and no one commented on it. The Court rejected this issue regarding criminal cases last year. So, now this issue is split into two systems, one for civil and one for criminal.

4. FARE PROGRAM UPDATE

Mike DiMarco (AOC) gave a brief overview of the progress of the FARE program. Mr. DiMarco reported that the full FARE program is being rolled out in the seven pioneer courts over the next six to nine months. The Tucson and Showlow courts have submitted backlog cases and are already generating revenue which probably would not have been collected. Additional courts, identified as pilot courts are now working with FARE program staff on implementing components of FARE in their courts. The Flagstaff Justice and Municipal courts will begin receiving FARE services regarding their backlog cases in December, 2003. Scottsdale and Glendale have also expressed interest.

Web payments will be available on December 15, 2003. The Administrative Order revisions regarding earlier expressed concerns should be completed soon.

5. TRAFFIC CITATION FILING ISSUES

Mike DiMarco related that Judge Ryan Reinhold (one of the FARE pioneer court members) has suggested a road show type of program be initiated to educate law enforcement regarding the importance of timely citation filing with the court, particularly to help expedite the collection of fines and fees. Delayed citation filings significantly impact the FARE program. Judge Reinhold also proposed that ARS 28-1593 be changed from allowing law enforcement 10 days to file citations with courts to three days, although it is anticipated that law enforcement agencies may have a problem with this.

Judge Kennedy voiced concern over possible ethical ramifications of judges meeting with law enforcement to raise revenues. Mr. Rick Rager (guest) commented that if the courts were going to hold law enforcement to a higher standard the courts should be held to the same standard and ensure their citations are entered into their automated system within three days of receiving them.

Several members commented this issue may realistically be a local issue. Kathy Barrett suggested it may be that some courts set their arraignment dates to soon following the violation and if these same courts were to move the dates out a little farther into the future, it may help resolve the FARE issue.

6. UNIFORM CONDITIONS OF PROBATION; CODE SECTION 6-207

Kathy Waters (AOC) and Paula Taylor (AOC) briefed the committee on the Uniform Conditions workgroup that was originally formed five years ago and has been a work in progress, since. The workgroup was comprised of judicial, clerical, prosecutor, public defender and probation representatives and their goal was to eliminate confusion about the conditions of probation form and reduce the bench's need to write in specifics or clarifications. The group is proposing amendments to the Conditions of Probation form and to ACJA Code 6-207.

The proposed amendments have been globally distributed (to judges, court administrators, clerks of court, prosecutors, defense attorneys etc.) for review and comment. Recent modifications to the proposals have been made pursuant to comments received. Additional comments are still welcome at this time.

Ms. Waters clarified the Superior Court would use the proposed form for supervised probation cases only. Limited Jurisdiction courts may use a similar form, designed to fit their specific needs, (for supervised probation cases) as long as conditions 1 -15 are included. These forms would not be applicable with unsupervised probation, another form would need to be used for same. Some key changes in the form that were noted are:

- Changes condition # 3, requires the defendant to report after sentencing or after law enforcement contact (#8).
- Allows for the court directive regarding drug testing or treatment (#9, 10).
- Changes state to county.
- Form designed to be more user friendly for everyone, while not taking away from judicial discretion.
- Requires a release consent for information (HIPPA rule).
- Minor changes to other conditions.

Judge Lester noted that a probation service fees box was not included on the sample form. Ms. Taylor responded such provision can be added by courts. Judge Traynor advised that limited jurisdiction courts will want a one page document. Kathy Barrett noted the amended code appears to require limited jurisdiction courts to use this same form. Ms. Taylor explained that section D3b clarifies that a limited jurisdiction court, when it develops it's form, will include conditions 1 - 15. Judge Anagnost supplied the wording changing state to county should actually be state/county to make it clear the court may choose which applies.

Ms. Waters reported the Committee on Probation (COP) approved the amendments understanding that changes were still being made based on feedback. This issue is also going to COSC, the Presiding Judges and to AJC, in December.

Motion: Motion made by Judge McCoy and seconded by Frank Maiocco **to approve the amended code and form presented.** Motion passed unanimously . **LJC-03-20.**

7. LEGISLATIVE SUBCOMMITTEE REPORT

David Benton (AOC) and Page Gonzales (AOC) described the updated status of the following bills in the 2004 legislative package as adopted by the AJC:

PROPERTY TAX APPEAL TIME LIMIT - Allows tax courts to follow the Rules of Civil Procedure when hearing appeals regarding valuation or classification of property.

MENTAL HEALTH EXPERTS - Changes from mandatory to permissive the requirement that one of two mental health experts appointed by the court to conduct a competency examination be a psychiatrist.

PREPARATORY RELEASE FOR INMATES SENTENCED TO PROBATION - Allows inmates sentenced to a consecutive term of prison, followed by probation to be equally eligible for early preparatory release as inmates sentenced to prison only. A defendant may waive community supervision after time served and go directly into probation, but simultaneously waives early release credits. Defendants sentenced to prison only remain eligible for early release credits.

FORCIBLE ENTRY AND DETAINER - Amends statute to conform with Court Rule, directing cost bonds and supersedeas bonds (periodic rent payments) in forcible detainer appeals to be paid in the justice court during the appeal process in Superior Court.

SMALL CLAIMS HEARING OFFICERS - Provides compensation to small claims hearing officers if funded by the county and approved by the Presiding Judge. Currently, only civil traffic hearing officers are allowed compensation.

DRUG COURT FUNDING - Efforts to find a dedicated funding source for adult and juvenile drug courts. Funding will be used for treatment, staff and equipment for drug court programs.

MVD REGISTRATION HOLDS - Expands the current Traffic Ticket enforcement Assistance Program (TTEAP) through MVD to include delinquent restitution, fines, surcharges, penalties or assessments.

TIP ON PROBATION ABSCONDER LOCATION - Utilizes the Tax Intercept Program (TIP) to assist probation departments in locating probationers who abscond. Through this proposal the Arizona Department of Revenue will notify the court of an absconder's current home address whether or not a tax refund is due.

Frank Maiocco asked about the status of the hearing officer concept that was discussed at the last LJC meeting. Page Gonzales responded that Judge Peterson moved (at AJC) to table the issue to see what happens with this item at the Justice of the Peace Association meeting. Several LJC members expressed concerns to Ms. Gonzales that this issue is critical and needs to be addressed. Ms. Gonzales agreed to follow up on this issue.

Ms. Gonzales reported that in special session, House Bill 2533 was repealed.

Ms. Gonzales summarized the Department of Corrections (DOC) bill that is currently moving through the process (as proposed amendments to SB1003) regarding boating and driving under the influence violations. This strike all bill would require persons convicted under these title 28 and title 5 violations to pay an additional \$1,000.00 assessment which would go to the Prison Overcrowding Fund established by ARS 41-1651. Judge Traynor asked if the \$1,000.00 penalty would be assessed after fines and surcharges, similar to the DUI abatement fee. Ms. Gonzales responded this has not been addressed in the bill.

Ms. Gonzales reported that AOC staff predicted the revenue increase (because of this bill) to be between 18.8 and 23 million dollars (depending on the increased assessment amount) while the newspapers reported it to be between 26 and 36million. When asked by members how AOC staff arrived at their figure, Ms. Gonzales agreed to supply a copy of the report prepared by AOC staff.

Ms. Gonzales stated that she and Mr. Benton have been talking with legislators about possibly having a portion of the increased revenues go into other funds, such as drug courts. The bill also establishes a base fine for a boating under the influence conviction of \$250.00 and establishes a mandatory \$750.00 fine for aggravated DUI. Ms. Gonzales explained how the bill started out that all surcharges are not waivable and now allows that the not waivable clause applies only to a DUI conviction. Ms. Gonzales related that the Senate heard the bill yesterday and it is expected it may pass out of the Senate, but there are rumors circulating that the Governor will veto it because of the private prison issue.

Judge Anagnost asked if community service in lieu of the additional assessment would be an option and commented that many defendants cannot afford to pay this amount on top of what they already have to pay and if extended over time for payments, may take years to collect.

David Benton summarized versions of the same Child Protective Services (CPS) bill. Mr, Benton stated the Governor introduced a bill that defines CPS and asks for a 27 million dollar appropriation for additional CPS workers and operations. Another version of the bill introduced by Rick Romley proposes to split out CPS, creating it's own agency and contains more comprehensive definitions of abuse. This version does not appear to be supported by the Governor and is viewed by many legislators as being much more punitive than the Governor's version. Additionally, Rick Romley's version contains no appropriation requests. There is a rumor circulating that Senator Bennett has also drafted a version of the same bill which lies somewhere between the Governor's and Rich Romley's.

Judge Traynor stated there was a class 6 felony bill (which appears to be dropped, for now) that takes several class 6 felonies and designates them as class 1 misdemeanors. It is anticipated that this bill may resurface in the future.

Paul Thomas inquired about the status of a bill that would raise the Justice of the Peace civil jurisdiction to \$20,000.00. Ms. Gonzales responded the bill surfaced after the last LJC meeting but prior to the AJC meeting, therefore it was presented to the AJC and although they discussed it briefly, they tabled the issue. Ms. Gonzales concluded that another proposal to appoint Presiding Justices of the Peace was not

discussed at AJC.

8. JUDGES CONNECTING WITH CLASSROOMS PROGRAM

Agnes Felton (AOC) and Sue Latzko (AOC) demonstrated materials that judges may use regarding the Arizona Judicial System, when making presentations to schools and other agencies. Teachers from all levels were consulted to help set up the curriculum. The materials are divided into elementary, middle and high school packets. They include content information, speaking outlines, lesson plans, activities, resources, videos and overheads. These materials are available to all courts from their local county training coordinators and from the AOC.

Kathy Barrett asked if it is possible to also obtain the materials on CD. Ms. Latzko responded this medium may be available in the future.

9. EXECUTIVE SUBCOMMITTEE REPORT

Judge Traynor reported that the Executive subcommittee met once since the last LJC meeting. In this meeting they covered some of the issues on today's agenda. The warrant and summons issue was discussed and the subcommittee made suggestions for changes which Judge Anagnost will cover in his presentation. The subcommittee reviewed Judge Anagnost's previous response and Judges Finn's comments on behalf of the limited jurisdiction presiding judges regarding Eleanor Eisenburg's Rule 17.2 petition. Comments are due on this issue by March 1, 2004 so the committee does not need to take action at this time. The Form IV issues and the strategic plan were also discussed and there will be more on these issues later in this meeting.

10. FORM IV WORKGROUP UPDATE

Judge Traynor stated that the workgroup determined that as each county seems to have different versions of the Form IV, (release questionnaire) this item may actually be a Maricopa County only issue. Judge Traynor referred members to a form samples handout which contains the form Maricopa is currently using along with a draft proposed form in which the domestic violence and other violence issues have been addressed. The reason it is important these items be added is that often in Maricopa County the arresting officer is not present at the initial appearance, therefore such critical information is not always available to judge to use in determining release conditions. Judge Traynor suggested to the members that he would appreciate receiving sample Form IV's used in other counties.

11. ADR - CREDENTIALING OF MEDIATORS

Joan Tobin briefed the committee on the Supreme Court ADR Advisory Committee recommendations for minimum credentialing guidelines for mediators receiving referral cases from Arizona courts. These recommendations will be also be provided to the AJC next month. The ADR Advisory Committee recommends the following requirements in credentialing mediators for Superior Court:

- A high school diploma (or equivalent)
- A minimum of one 40-hour general mediation skills training (or equivalent)
- Must have completed 20 mediation cases. In family law at least five cases

must include parenting plan mediation, five must include child support or spousal maintenance mediation and five must include mediation of asset division.

- Must agree to abide by an Ethical Code of Conduct.
- Must agree to honor specific grievance procedures.
- Must be at least 21 years of age.
- Must complete at least 10 hours of mediation practice related continuing education every two years.

Kathy Barrett asked how volunteer mediators will get their prior experience to mediate in civil cases. Ms. Tobin responded for the most part, people get their training in the Superior Court and then they volunteer in the Justice Court and they handle a number of cases there. The committee feels that for them to move on to mediate in Superior Court they should have some prior mediation experience. Ms. Tobin stated that mentoring works well with new mediators.

Kathy McCoy supplied that Mohave County has a community college course for certifying mediators and they also do some college related mediation cases to gain some experience. Ms. Tobin responded that Mohave County is a leader in this area and mentioned that Coconino and Yavapai counties also have programs where they work with a co-mediator model.

Ms. Tobin stated the committee is continuing this work and asked LJC members to provide any feedback to Judge Raymond Weaver, who is the committee Chair.

12. DISCLOSURE PRIOR TO SUMMONS SERVICE

Greg Eades (AOC) addressed the committee regarding ARS 13-2813 and the issue of prohibiting disclosure of indictments prior to service on the defendant. This issue has generated much discussion in past meetings due to differing interpretation of the statute and it's applicability in misdemeanor cases.

Mr. Eades supplied that he and Jennifer Greene (AOC) had planned to offer a Supreme Court Rule (123) amendment regarding this issue at today's meeting that would provide an innovative interpretation of the statute, so that it only applied to felony cases. However, representatives of the Maricopa County Attorney's Office hold a strong belief the statute does apply to misdemeanor cases, they believe it was intended to apply to misdemeanor cases.

Mr. Eades stated that instead of offering a rule change at this time, he is asking the committee for more time to work with prosecutors in resolving, possibly, a statute change and asked for volunteers to assist in this effort. Judge Anagnost and Judge Kennedy volunteered to work with Mr. Eades in this issue.

13. DOMESTIC VIOLENCE AND INJUNCTION FORMS WORKGROUP

Judge Anagnost reported that CIDVC is meeting tomorrow and it is hoped the Supreme Court will develop an Administrative Order to allow courts to use the modified domestic violence and injunction forms.

Karen Kretschman (AOC) supplied that Dave Byers (AOC) has approved the forms, therefore an additional administrative order is not required. Ms. Kretschman

stated the Fee Deferral and Waiver forms have also been updated and approved and all of these forms will be provided in the updated DV bench book. Ms. Kretschman reported the effective implementation date for all forms is February 1, 2004 to allow courts time to use up present supplies of the forms.

Judge Anagnost concluded that the DV forms workgroup is still working on future improvements and asked that members forward comments or suggestions to him. Ms. Kretschman stated besides being made available via the DV bench books, the new forms will be e-mailed to all courts and they will be accessible on the web soon.

14. FORMS/RULES SUBCOMMITTEE

RIGHT TO COUNSEL, RULES 4.2 and 14.3

Judge Anagnost briefed the committee on the Rule 28 petition regarding defendant right to counsel issues. This amended petition (which is the modification that resulted from discussion at the last LJC meeting) has already been filed with the Supreme Court. It addresses the gap in rules 4 and 14 with regards to right to counsel at initial appearance and at arraignment.

Motion: Motion made by Judge Lamb and seconded by Judge Riojas **to endorse the filing of the amended Rule 28 petition regarding appointment of counsel.** Motion passed unanimously . **LJC-03-21.**

WARRANTS/SUMMONS, RULE 3.1, 3.2

Judge Anagnost explained the amended rule 28 petition (to amend Criminal Rules regarding warrants and summons) presented today is the version that was modified as result of discussion at the Executive Subcommittee regarding his first draft. Judge Anagnost stated this petition creates two categories for warrants; pre adjudication and post adjudication. The changes regarding summons and warrants are not meant to pre empt the Title 13 processes, rather they offer alternatives. This rule petition clarifies that an additional complaint filed by the prosecutor is not necessary. The court may issue warrants without such complaints. Judge Kennedy asked if DPS would enter these warrants in their system without a statute number. Greg Eades responded that he has discussed this issue with DPS and they will come up with a way to make these warrants work in their system.

Judge Anagnost also provided that service of summons by first class mail is also addressed in the petition and his court is presently experiencing success with this type of service. Judge Riojas offered the language in Rule 3.1(d) is not consistent with Rule 26.12. Judge Anagnost responded that will be corrected.

Motion: Motion made by Judge Lester and seconded by Judge Riojas **to endorse the filing of the amended Rule 28 petition with the modification described regarding summons and warrants.** Motion passed unanimously . **LJC-03-22.**

RULE 17.2

Judge Anagnost briefed the committee on the amended rule petition filed by Eleanor Eisenburg of the ACLU. The petition requires the court to make a disclosure to defendants that a conviction may impact immigration status. Judge Anagnost reported the committee has between now and February to comment if they wish.

Judge Anagnost concluded his Rules presentation by mentioning that the boating while intoxicated Administrative Order (meant to reconcile recent legislation which changed a petty offense to a civil offense) has been signed and is now in effect. Karen Kretschman supplied that the Administrative Order offers only a temporary solution to the problem until suitable amendments to procedural rules can be prepared. Judge Anagnost agreed that the Rules Subcommittee will commence work on rules to address this issue.

15. DEFENSIVE DRIVING SUBCOMMITTEE

Kathy Barrett stated there is no report at this time but that Bob Schaller was expected to be present to give an update on the electronic driving school reports topic.

Mr. Schaller was not present, however and a handout regarding eligible violation codes was distributed. Upon review of the document, it was pointed out that it may not be the most recent revision as the document is dated 2001. Kathy Barrett agreed to follow up with Mr. Schaller to determine if the handout is actually the most current version available.

16. STRATEGIC PLANNING SUBCOMMITTEE

Paul Thomas provided a brief history of previous work done at the Goodyear conference last year regarding strategic court issues. Mr. Thomas stated the following priority areas emerged as a result of discussions and they were: automation, improving resources through more clearly identifying standards in the courts and improving interagency cooperation.

Since automation affects everything done in the courts, it was felt this should be the top priority. On the second area, standards, individuals expressed that if there were specific standards similar to the Minimum Accounting Standards (but in areas such as facilities, space, clerk ratios, security etc.) this would help courts in determining the resources they need. The LJC Executive Subcommittee looked at the third issue, improving interagency cooperation in two ways; improving at the local level and at the state level. LJC could be involved in improvements at the state level, such as possibly reactivating the MVD/LJC interagency committee.

One subcommittee suggestion is that the LJC develops a standing technology subcommittee. A second suggestion is that an LJC member sit on the Commission on Technology (COT) to enhance committee communications. Joan Harphant volunteered to attend the COT meetings in order to bring pertinent information back to the LJC, until such time an LJC member is appointed to the COT.

17. PROPOSED 2004 MEETING DATES

Lori Johnson distributed a list of proposed LJC meeting dates (February 25, May 19, September 28, September 29 and November 17, 2004) and locations for 2004.

Motion: Motion made by Judge Anagnost and seconded by Judge Lester **to approve the 2004 LJC meeting dates as proposed.** Motion passed unanimously .
LJC-03-23.

18. UPDATING DATA IN CPOR BY HOLDER OF RECORD

Judge Traynor stated that following the September LJC meeting a workgroup was formed to study the first recommendation in this issue. Jim Scorza added that there was a misconception (from the last LJC meeting) that law enforcement officers would be able to modify or update court records regarding protective orders. Mr. Scorza supplied that he and Pam Jones participated in the workgroup on October 27, 2003 and after discussion they determined this is not really the case.

Robert Roll gave a revised presentation of the CPOR/LPOR process, issues and recommendations. Mr. Roll demonstrated that under the current process there are times when if the information on the order is insufficient, the field office may not be able to get any information regarding the order. The new process will alleviate the problem because if the record does not have all the required fields to go to NCIC and the holder of record accepts it, it will be available locally for queries from law enforcement. Currently only 14 - 48% of all orders are successfully get entered into NCIC.

Mr. Roll clarified that CPOR is where the court record goes and LPOR is where law enforcement can query (not change) the court record. Out of State officers cannot query unaccepted records in LPOR.

Judge Traynor asked if law enforcement would be able to know which version of a protective order (in the case of an amended order) they are viewing. Mr. Roll responded they will always be looking at the latest hard copy order that they have and DPS will be able to see that there are two orders. The second one will be flagged as a modified record. Carol Ashton (AOC) interjected that the AOC trains court staff to enter the modified order information into the case management system. Mr. Roll added that DPS will be conducting training for their officers.

Mr. Roll identified the following data errors as causing some discrepancies;

- There are a large number of cases without parties associated
- Date of birth is invalid or missing
- More than one defendant is listed on the order

Konnie Young supplied that the hard copy of the order is most of the time, correct. The errors often occur when the data from the hard copy is entered into the automated system. The corrections being suggested would be to supplement the electronic record to match the hard copy order

Judge Lester suggested that these data errors may well be best addressed by court staff training and asked if the AOC can produce error reports so that courts will know how they are doing. Mr. Roll responded that data clean up reports are available and a link to such will be forwarded to Lori Johnson to distribute to all members. Mr. Roll also stated the new trainer may be able to distribute these reports in the future.

Pam Jones asked how often training will be offered regarding this issue. Carol Ashton responded training will be offered periodically through Sentra, through regional conferences and at specific request from a court.

Mr. Roll re stated the two recommendations being made at this time: .

- Approve that the Holder of Record may supplement electronic LPOR data. This item was approved by CIDVC and COSC.
- Approve that the Holder of Record may access unserved protective orders in LPOR. This item was approved by CIDVC and goes before COSC on November 21, 2003.

Motion: Motion was made by Judge Anagnost and seconded by Judge Riojas **to** approve both recommendations as stated. Motion passed unanimously . **LJC-03-24.**

OTHER BUSINESS:

CALL TO THE PUBLIC

No response.

Meeting adjourned at 2:35 PM by Judge Michael Traynor

Respectfully submitted,

Lori Johnson
Staff to the LJC